IN THE

Supreme Court of the United States

October Term, 1975

No. 75-648

FRED G. MORITT,

Appellant,

against

EXTRAORDINARY SPECIAL AND TRIAL TERM OF THE SUPREME COURT, COUNTY OF KINGS, HON. JOHN M. MURTAGH, as Presiding Justice of the Extraordinary Special and Trial Term, HON. MAURICE H. NADJARI, as Special Deputy Attorney General, LOUIS J. LEFKOWITZ, Attorney General of the State of New York,

Appellees.

On Appeal from the Supreme Court of the State of New York, Appellate Division, Second Judicial Department

MOTION TO DISMISS OR AFFIRM

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Preliminary Statement

Appellees move the Court to dismiss the appeal herein on the ground that it does not present a substantial federal question, or in the alternative, to affirm the judgment of the New York Supreme Court, Appellate Division, Second

Department, on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

Decisions Below

The judgment of the New York Supreme Court, Appellate Division, Second Department, is reprinted at page 30 of the Jurisdictional Statement and is reported at 46 A.D. 2d 1012. The order of the New York Court of Appeals dismissing the appeal is reprinted at page 31 of the Jurisdictional Statement and the accompanying memorandum opinion is reported at 36 N.Y. 2d 911. The orders of the Court of Appeals denying reargument and leave to appeal are reprinted at pages 32 and 33 of the Jurisdictional Statement and are as yet unreported.

Jurisdiction

The judgment of the New York Supreme Court, Appellate Division, Second Department, was entered December 27, 1974. The New York Court of Appeals dismissed the appeal on June 4, 1975, and denied leave to appeal on September 10, 1975. Notice of appeal to this Court was filed in the Appellate Division on September 29, 1975. Appellant invokes the appellate jursdiction of this Court pursuant to 28 U.S.C. §1257 (2).

Statutes Involved

The pertinent state constitutional and statutory provisions are set forth in the Jurisdictional Statement at pages 34-42.

Statement of the Case

On September 19, 1972, Governor Nelson A. Rockefeller of New York, acting pursuant to section 63 of the New York Executive Law, designated State Attorney General Louis J. Lefkowitz to supersede the five district attorneys in New York City and prosecute all acts of corruption relating to the enforcement of law and administration of criminal justice in the city. Exec. Order Nos. 55, 56, 57, 58, 59, 9 NYCRR 1.55-59. Appellee Maurice H. Nadjari was appointed Deputy Attorney General and Special State Prosecutor to supervise these matters. On October 13, 1972, acting pursuant to article VI, section 27, of the New York State Constitution, Governor Rockefeller designated an Extraordinary Special and Trial Term of the New York Supreme Court in each county in the city for trial of the Special Prosecutor's cases and appointed Justice JOHN M. MURTAGH to preside at each term. Exec. Order Nos. 61, 62, 63, 64, 65, 9 NYCRR 1.61-65.

By an indictment filed April 17, 1974, the Extraordinary Special Grand Jury for the County of Kings charged Fred G. Moritt, the appellant, with the crimes of conspiracy in the third degree (N.Y. Penal Law §105.05 [McKinney 1967]), grand larceny in the second degree (N.Y. Penal Law §155.35 [McKinney 1967]), perjury in the first degree (two counts) (N.Y. Penal Law §210.15 [McKinney 1967]), and tampering with a witness (N.Y. Penal Law §215.10 [McKinney 1967]). Indictment No. S.P.O. K-13/1974.* Specifically, the indictment alleges that from June, 1972,

* For the convenience of the Court, the indictment is reprinted as an addendum to this motion.

to January, 1974, Moritt, a Judge of the Civil Court of the City of New York, conspired with Theodore Mann and others to cause Mann "to be placed on the New York City payroll at a salary of $18,500 a year under the pretense that Mann would perform services as a Law Secretary in the Civil Court of the City of New York." According to this arrangement, Mann received this salary and then made these funds available to Moritt for production of a play; in addition, Moritt hired a law school graduate at one hundred dollars per week to occupy a desk in his chambers and "create the impression that a Judge's Law Secretary was in attendance and performing work in the Civil Court" (count 1). Consequently, from about September 18, 1972, to about January 24, 1974, Moritt stole a total of $26,050 from the City of New York (count 2). The indictment further alleges that Moritt testified falsely before the Grand Jury on these and other matters (counts 3, 4), and intentionally made a false statement to a Grand Jury witness to affect the witness's testimony (count 5).

Subsequent to the filing of the indictment, Moritt moved in the New York Supreme Court, Appellate Division, Second Department, by permission granted pursuant to subdivision 2 of section 149 of the New York Judiciary Law, for an order dismissing the indictment, *inter alia*, on the grounds that the Special State Prosecutor did not have jurisdiction over the case under the Governor's Executive Order Number 58, 9 NYCRR 1.58 (order of superseder for Kings County), and that the evidence before the Grand Jury was insufficient. After examining the Grand Jury minutes, the Appellate Division, in a memorandum opinion dated November 12, 1974, denied the motion. *Matter of*

Moritt v. *Nadjari*, 46 A.D. 2d 784 (2d Dept. 1974).* Moritt separately moved for reargument and reconsideration of his motion and amendment of the Appellate Division's order; the Appellate Division denied these applications. A motion similar to that made in the Appellate Division is now pending in the trial court.**

Shortly after the denial of his initial motion to dismiss, Moritt petitioned the Appellate Division, Second Department, for an order pursuant to article 78 of the New York Civil Practice Law and Rules prohibiting his prosecution. In his petition he alleged that article VI, section 27, of the New York State Constitution, section 149, subdivisions 1 and 2, of the New York Judiciary Law, section 63 of the Executive Law, and Executive Order Number 58, 9 NYCRR 1.58, are unconstitutional, that the indictment is jurisdictionally invalid because judges and law secretaries are subject to the supervision of the Administrative Board of the New York Judicial Conference and not criminal prosecution for the crimes alleged, and that Executive Order Number 58 does not vest the Special State Prosecutor with jurisdiction over the case. In an affidavit and accompany-

* As the application was a motion to dismiss the indictment and not a petition for prohibition pursuant to article 78 of the New York Civil Practice Law and Rules, the Appellate Division noted that the moving papers should have been entitled, "People of the State of New York v. Fred G. Moritt."

** Alleging prosecutorial misconduct, Moritt has also instituted a civil rights action against the Special State Prosecutor and others in the United States District Court for the Eastern District of New York. By an order entered August 27, 1975, Chief Judge MISHLER, upon the Special Prosecutor's motion, dismissed all but one of the counts in Moritt's complaint. *Moritt* v. *Nadjari*, —— F. Supp. —— (E.D.N.Y.1975). By permission granted pursuant to 28 U.S.C. §1292(b), the Special Prosecutor is presently appealing the District Court's order as to the undismissed count to the United States Court of Appeals for the Second Circuit.

ing memorandum of law, Special Assistant Attorney General Kenneth R. Wolfe opposed the application, both on the merits and on the ground that article 78 relief was not available to appellant. By an order entered December 27, 1974, the Appellate Division, without opinion, denied the petition and dismissed the proceeding on the merits. *Matter of Moritt* v. *Extraordinary Special and Trial Term, Supreme Court, Kings County,* 46 A.D. 2d 1012 (2d Dept. 1974).

Moritt sought to appeal by right from this judgment to the New York Court of Appeals on constitutional grounds pursuant to New York Civil Practice Law and Rules 5601. On June 4, 1975, the Court of Appeals granted the Special State Prosecutor's motion to dismiss the appeal, holding "that no substantial constitutional question is directly involved (CPLR 5601, par [b], par 1)." The court further noted, "We do not reach the obvious question as to whether prohibition lies under CPLR article 78 (*Matter of Nigrone* v *Murtagh,* 36 NY 2d 421; *Matter of State of New York* v *King,* 36 NY 2d 59)." 36 N.Y. 2d 911. On September 10, 1975, the Court of Appeals denied Moritt's motions for reargument of the dismissal of the appeal and for leave to appeal. —— N.Y.2d ——.

On appeal to this Court from the Appellate Division, appellant raises the same claims, with the exception of his challenge to the jurisdiction of the Special State Prosecutor, which is a question of New York State law.

ARGUMENT

The questions raised are so unsubstantial as not to warrant further argument.

Appellant's first attack is directed at article VI, section 27, of the New York State Constitution, and its implementing statute, section 149, subdivision 1, of the Judiciary Law, both of which provide that the Governor may, when "the public interest requires," appoint one or more extraordinary special and trial terms of the Supreme Court and may name "the justice who shall hold the term"; further, the Governor "may terminate the assignment of the justice and may name another justice in his place to hold the term." By this procedure, the Governor, as he did at the same time in the other four counties of New York City, established the Extraordinary Special and Trial Term of the Supreme Court, Kings County, for the trial of cases brought by the Special State Prosecutor, and named Mr. Justice JOHN M. MURTAGH to preside at the term. Exec. Order No. 64, 9 NYCRR 1.64. Moritt claims that this procedure allows the Governor to appoint and remove a judge at will and thus violates the separation of powers doctrine of the United States Constitution and the independence of the judiciary. He is wrong.

To begin with, the federal courts in *United States ex rel. Monty* v. *McQuillan,* 385 F. Supp. 1308 (E.D.N.Y. 1974), *aff'd,* 516 F. 2d 897 (2d Cir. 1975), have rejected a similar challenge to the procedure. Specifically, Judge JUDD noted that the procedure does not violate due process standards, for a defendant has no right to a judge of his own choosing

or even to a certain method of selecting a judge, as long as the judge is fair and impartial. 385 F.Supp. at 1310; *see United States* v. *Keane,* 375 F.Supp. 1201, 1204 (N.D. Ill. 1974). The court further observed in a statement most appropriate to the case at bar:

> "No substantial charge of actual bias is made against Mr. Justice Murtagh. The general rule is that questions whether it would be improper to sit in a particular case are 'a matter confided to the conscience of the particular judge.' Weiss v. Hunna, 312 F. 2d 711, 714 (2d Cir. 1963), cert. denied, 374 U.S. 853, 83 S.Ct. 1920, 10 L.Ed. 2d 1073, rehearing denied, 375 U.S. 874, 84 S.Ct. 37, 11 L.Ed.2d 104 quoting MacNeil Bros. Co. v. Cohen, 264 F. 2d 186, 189 (1st Cir. 1959). Bias can be charged in any event only on a showing that it stems from an extrajudicial source and results 'in an opinion on the merits on some basis other than what the judge learned from his participation in the case.' United States v. Grinnell Corp., 384 U.S. 563, 583, 86 S.Ct. 1698, 1710, 16 L.Ed. 2d 778 (1966)." *United States ex rel. Monty* v. *McQuillan, supra,* 385 F.Supp. at 1311.

The *Monty* case thus vitiates appellant's claim that the establishment of an extraordinary term infringes upon the independence of the judiciary in violation of due process. Appellant fails to rebut the logic of that decision. Moreover, he has in no way shown or even hinted that the Governor who appointed this Extraordinary Term or the many governors who in the past have established similar terms have done so with any purpose other than that prescribed by the statute, *i.e.,* when the public interest requires such action. Indeed, for the Governor to "appoint a judge to do his bidding," as appellant fears, would be a "violation

of [the] law" under attack. *People* v. *Davis,* 67 Misc. 2d 14, 16 (Sup. Ct., Extraordinary Special and Trial Term, Ontario Co. 1971).

The additional power of the Governor to terminate the assignment and name another justice to hold the term is one of necessity, occasioned by the possibility that a presently assigned justice may become unable or unwilling to continue his position. The Governor has no judicial function or influence in the proceedings. Aside from the power to assign and remove the justice, the Governor "has no power to do more," and he "has not attempted to do more." *People ex rel. Saranac Land & Timber Co.* v. *Supreme Court,* 220 N.Y. 487, 492 (1917). Indeed, he has not yet even removed or replaced the justice originally assigned to this Extraordinary Term.

In short, an extraordinary term is "to be conducted in accordance with the rules of law governing all the other terms of court with the exception of the designation of the judge." *Matter of Reynolds* v. *Cropsey,* 241 N.Y. 389, 395 (1925). The procedure in no way creates a tribunal with a built-in personal or pecuniary interest in the outcome of a trial. *Cf. Gibson* v. *Berryhill,* 411 U.S. 564 (1973); *In re Murchison,* 349 U.S. 133 (1955); *Tumey* v. *State of Ohio,* 273 U.S. 510 (1927). Indeed, if the trial judge is unbiased, or if no prejudice is shown, appellant would have no reason to complain. *United States ex rel. Monty* v. *McQuillan, supra,* 385 F. Supp. at 1311. And if the judge is biased against appellant, the latter has an adequate remedy in the state trial court for seeking the judge's disqualification. N.Y. Judiciary Law §14 (McKinney 1968); 22 NYCRR 33.3(c) (N.Y. Judicial Conference).

As to appellant's additional argument that an extraordinary term violates the federal separation of powers doctrine, the United States Constitution contains no requirement that the structure of state governments conform exactly to the structure of the national government. The federal separation of powers doctrine does not apply to the states:

> "Whether the legislative, executive and judicial powers of a state shall be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in some respect to some matters, exert powers which, strictly speaking, pertain to another department of government, is *for the determination of the state.* And its determination one way or the other cannot be an element in the inquiry, whether the due process of law prescribed by the 14th Amendment has been respected by the state or its representatives when dealing with matters involving life or liberty." *Dreyer* v. *Illinois,* 187 U.S. 71, 84 (1902) (emphasis supplied).

Cf. United States v. *Brown,* 381 U.S. 437, 442-43 (1965). In truth, all that the Constitution requires of each state is a "Republican Form of Government" (U.S. Const. art. IV, §4), the existence of which here is demonstrated by the fact that the People of the State of New York themselves voted to adopt the very state constitutional provision under attack. *See* N.Y. Const. art. XIX, §1 (McKinney 1969).

Another challenged statute, section 149, subdivision 2, of the New York Judiciary Law, provides that the Appellate Division, in its discretion, may hear a motion addressed to an extraordinary special and trial term. This procedure, appellant claims, denies him equal protection of the

laws since, allegedly unlike other defendants in the ordinary criminal terms of the New York Supreme Court, he is relegated to addressing all pretrial motions to the same judge in an extraordinary term, subject only to the discretion of the Appellate Division to hear such motions. But ordinary criminal defendants, like defendants in an extraordinary term, have no right to a judge of their own choice, *United States ex rel. Monty* v. *McQuillan, supra,* and similarly must make all pretrial motions to a single judge, unless "defendant shows that it would be prejudicial to the defense were a single judge to consider all the pre-trial motions." N.Y. Criminal Procedure Law §255.20 (2) (McKinney 1971). Surely, however, the existence of such prejudice to an extraordinary term defendant would likewise be a factor in the Appellate Division's decision whether to hear the motion. And, of course, in such case the defendant would have the benefit of five appellate judges rather than one trial judge hearing his motion.

Moritt further claims that once in the Appellate Division, the rules of that court, at least in the Second Department (22 NYCRR 670.3 [b]), deny him oral argument of his motion, as opposed to ordinary criminal defendants. His argument is misleading. State law does not mandate oral argument for any pretrial criminal motions. *See* N.Y. Criminal Procedure Law §255.20 (McKinney 1971). Indeed, Rule 752.11 of the New York Supreme Court, Kings County (22 NYCRR 752.11), relied on by Moritt to show that oral argument is allowed in criminal cases, concerns a civil part (Special Term Part I), not a criminal part, of that court. In any event, the Appellate Division has on occasion abrogated its own rule and heard oral argument

on pretrial motions for defendants in the present Extraordinary Term. *E.g., Matter of Nigrone* v. *Murtagh,* 46 A.D. 2d 343 (2d Dept. 1974), *aff'd,* 36 N.Y. 2d 421 (1975); *People* v. *Steinman,* 44 A.D. 2d 839 (2d Dept. 1974). In short, the decision whether to hear oral argument on a motion is discretionary with all courts.

Also frivolous is Moritt's apparent claim that the very existence of the Appellate Division's discretion to hear pretrial motions violates equal protection. Indeed, Moritt has little reason to complain since the Appellate Division in his case exercised its discretion in his favor and agreed to hear his pretrial motion. *Matter of Moritt* v. *Nadjari,* 46 A.D. 2d 784 (2d Dept. 1974). Moreover, the use of sound judicial discretion is not uncommon to state or federal courts in setting bail, imposing sentence or granting leave to appeal, or to this Court in granting certiorari. Finally, there is no showing that the Appellate Division has practiced invidious discrimination or unreasonable distinctions in deciding whether to entertain pretrial motions. *Cf. Williams* v. *Oklahoma City,* 395 U.S. 458 (1969); *Baxstrom* v. *Herold,* 383 U.S. 107 (1966); *Griffin* v. *State of Illinois,* 351 U.S. 12 (1956).

The next challenged statute, section 63, subdivision 2, of the New York Executive Law, provides that the Attorney General or one of his deputies (in this case, the Special State Prosecutor, pursuant to the Governor's Executive Order Number 58, 9 NYCRR 1.58), shall, upon request of the Governor, supersede a local district attorney, and prosecute a certain case or class of cases. Appellant's argument that the Special Prosecutor abused his authority by engaging in various forms of misonduct is not a challenge to the constitutionality of a statute, but only to the prosecutor's conduct. *See Phillips* v. *United States,* 312 U.S. 246, 252 (1941).* Since his claim does not challenge a state statute, it is not cognizable by appeal in this Court. *Zucht* v. *King,* 260 U.S. 174, 177 (1922). The additional argument that the Governor's designation of the Attorney General was improperly executed is again an attack on an act, not a statute. If anything, Moritt questions the correctness of the Governor's action under the very statute challenged, Executive Law section 63, a matter of state law not reviewable in this Court. *Herb* v. *Pitcairn,* 324 U.S. 117, 125-26 (1945). At best, Moritt's claims amount to saying that a statute is unconstitutional because the statute itself has been violated, an untenable proposition.

Moritt's final claim is that the conduct of judges and their law secretaries is governed by state court administrative rules and that his prosecution for criminal misconduct constitutes an *ex post facto* application of the law. His petition in the Appellate Division regarding this issue challenged the prosecution only on jurisdictional grounds, as governed by state law, and not on federal *ex post facto* grounds. The federal claim has thus not been properly preserved for review. *Cardinale* v. *Louisiana,* 394 U.S. 437, 438 (1969). In any event, the claim is meritless. Never has it been suggested by New York law that a judge who lies to a grand jury or steals money from the City of New York by whatever fraudulent means he may devise is im-

* The question of alleged prosecutorial misconduct was not presented to the Appellate Division in the instant prohibition proceeding. Indeed, under state law, appellant would have been unable to raise the issue on a petition for a writ of prohibition. *See* note, p. 14, *infra.* The question of prosecutorial misconduct remains to be resolved in the trial court.

mune from criminal prosecution solely because he may also be subject to disciplinary action by administrative authorities. *Cf. Bouie* v. *City of Columbia,* 378 U.S. 347 (1964). Suffice it to say that the specific Penal Law provisions which form the basis of the indictment and which have been in effect since 1967 apply to everyone who violates them in New York State, including members of the judiciary.

In sum, the questions raised wholly lack merit and certainly a substantial federal question. *Zucht* v. *King,* 260 U.S. 174, 176 (1922); *Sugarman* v. *United States,* 249 U.S. 182, 184 (1919); *Equitable Life Assurance Society* v. *Brown,* 187 U.S. 308, 311 (1902). If the Appellate Division erred at all, it probably did so only in procedurally entertaining Moritt's petition for prohibition in the first place.* Having done so, however, it correctly decided the case on the merits.

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* New York law is clear that prohibition lies only to restrain a court's excess of power, *i.e.,* when "a court acts without jurisdiction, or acts or threatens to act in excess of its powers, and it affirmatively appears that this will be done in violation of a person's, even a party's rights, bút especially constitutional rights." *La Rocca* v. *Lane,* —— N.Y. 2d —— (Oct. 24, 1975); *see Matter of Nigrone* v. *Murtagh,* 36 N.Y. 2d 421 (1975); *Matter of State of New York* v. *King,* 36 N.Y. 2d 59 (1974); *Matter of Lee* v. *County Court, Erie County,* 18 N.Y. 2d 330 (1966). The jurisdiction of the trial court was not in the instant case specifically in issue, as an extraordinary term of the New York Supreme Court has the "same jurisdiction that belongs to any other term," *Saranac Land & Timber Co.* v. *Roberts,* 227 N.Y. 188, 191 (1919), and the Supreme Court has jurisdiction over the trial of all indictments. N.Y. CONST. art. VI, §7 (McKinney 1969). All that appellant was challenging was the manner in which the judge was designated and the accompanying procedure. Thus, whether under state law the Appellate Division properly entertained the proceeding on the merits may be seriously questioned. Indeed, in dismissing Moritt's appeal from the Appellate Division, the Court of Appeals noted that at the outset the case involved "the obvious question as to whether prohibition lies under CPLR article 78." *Matter of Moritt* v. *Extraordinary Special and Trial Term, Supreme Court, Kings County,* 36 N.Y. 2d 911 (1975).

Conclusion

The appeal should be dismissed, or the judgment appealed from should be affirmed.

Respectfully submitted,

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November, 1975

ADDENDUM

Indictment Number S.P.O. K-13/1974

People* v. *Moritt

Indictment

SUPREME COURT OF THE STATE OF NEW YORK

EXTRAORDINARY SPECIAL AND TRIAL TERM

COUNTY OF KINGS

Indictment No. S.P.O. K-13/1974

THE PEOPLE OF THE STATE OF NEW YORK

against

FRED G. MORITT,

Defendant.

THE EXTRAORDINARY SPECIAL GRAND JURY OF THE COUNTY OF KINGS, by this indictment, accuses the defendant of the crime of CONSPIRACY IN THE THIRD DEGREE, in violation of Section 105.05 of the Penal Law committed in the County of Kings, as follows:

The defendant from in or about June 1972 to in or about January 1974, with intent to engage in conduct constituting a felony, agreed with Theodore Mann and others to engage in conduct and cause the performance of conduct constituting the crime of Grand Larceny in the Second Degree.

During the period of the conspiracy, the defendant was a Judge of the Civil Court of the City of New York and Theodore Mann was an attorney duly licensed to practice law in the State of New York.

During the course of the conspiracy, Participating Investors, Ltd. was a domestic corporation formed for the purpose of producing a play. In that period the defendant was a director of the corporation and his wife was its President and principal stockholder. Also during the conspiracy Theodore Mann was a director and Secretary of the corporation, as well as being a major stockholder. In the period of the conspiracy, the defendant directed activities of Participating Investors, Ltd. from his Civil Court Chambers at 120 Schermerhorn Street, Brooklyn, New York.

It was the corrupt plan of the defendant that he and others would steal monies from the City of New York by causing Theodore Mann to be placed on the New York City payroll at a salary of $18,500 a year under the pretense that Mann would perform services as a Law Secretary in the Civil Court of the City of New York.

It was the corrupt plan of the defendant that Mann would pretend to be the defendant's Law Secretary in order to obtain the bi-weekly payroll checks ordinarily paid by the City of New York to a Law Secretary in the Civil Court.

According to the plan, the payroll checks would be deposited in Mann's checking account, but Mann would make those funds available to the defendant upon his request. Also, pursuant to this plan, Mann agreed to pay the monies

unlawfully obtained from the City of New York to certain individuals designated by the defendant.

It was part of the corrupt arrangement that a portion of the funds stolen from the City of New York would be diverted to Participating Investors Ltd., and utilized to hire and employ individuals to perform work in the defendant's chambers for that corporation.

It was also part of the corrupt arrangement that the defendant would use some of the monies stolen from the City of New York to hire a young law school graduate who would occupy a desk in the defendant's chambers and run errands and perform other chores for the defendant—thereby creating the impression that a judge's Law Secretary was in attendance and performing work in the Civil Court. According to the plan, the young law school graduate would receive $100 a week from Theodore Mann for the work he would perform for Participating Investors Ltd.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the conspirators committed and caused to be committed the following overt acts:

1. On September 11, 1972, the defendant hired Dennis Unterman, a young law school graduate.

2. On September 11, 1972, the defendant told Unterman that Mann would pay his salary.

Addendum—Indictment

3. On or about September 18, 1972, the defendant appointed Mann his Law Secretary.

4. On or about October 3, 1972, the defendant hired Ruth Volner to work for Participating Investors Ltd.

5. On or about October 3, 1972, the defendant told Ruth Volner that she would be paid by Mann.

6. From on or about October, 1973, to on or about January 24, 1974, Dennis Unterman obtained Theodore Mann's bi-weekly paycheck from officials in the Civil Court of the City of New York.

7. From in or about October, 1973, to on or about January 24, 1974, Dennis Unterman endorsed Theodore Mann's signature on bi-weekly payroll checks.

8. From in or about October, 1973, to on or about January 24, 1974, the defendant supplied Unterman with preprinted deposit slips for Mann's account.

9. From in or about October, 1973, to on or about January 24, 1974, Dennis Unterman deposited bi-weekly payroll checks to an account maintained by Theodore Mann.

10. From on or about September 11, 1972, to on or about January 24, 1974, Mann issued weekly checks to Unterman.

11. From on or about October 3, 1972, to on or about December 24, 1972, Mann paid Volner $1,510 for work performed for Participating Investors Ltd.

Addendum—Indictment

12. On or about October 2, 1973, the defendant hired Joyce Rossi to work for Participating Investors Ltd.

13. On or about October 2, 1973, the defendant told Joyce Rossi that Mann would pay her salary.

14. From in or about October, 1973, to on or about January 24, 1974, on a weekly basis, Mann mailed checks from Florida to the defendant, made out to Rossi and Unterman.

15. Between on or about October, 1973, and on or about January 24, 1974, the defendant received those checks.

16. Between on or about October, 1973, and on or about January 24, 1974, the defendant gave those checks to Unterman and Rossi.

SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, accuses the defendant of the crime of GRAND LARCENY IN THE SECOND DEGREE, in violation of Section 155.35 of the Penal Law committed in the County of Kings, as follows:

The defendant from on or about September 18, 1972, to on or about January 24, 1974, did steal from the City of New York, a sum of money in excess of $1,500, to wit, $26,050.

THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, accuses the defendant of the crime of PERJURY IN THE FIRST DEGREE in violation of Section 210.15 of the Penal Law, committed in the County of Kings, as follows:

The Grand Jury has been conducting an investigation to determine whether certain political party officers have conspired to accept bribes to improperly influence the appointments of Law Secretaries to Judges and Justices of the Courts having jurisdiction in Kings County. The Grand Jury has also been investigating to determine whether, as part of this conspiracy, Law Secretaries were permitted as a result of these bribes to absent themselves from work and to perform no services for the salaries they received.

Evidence adduced before the Grand Jury disclosed that a number of Law Secretaries assigned to the Courts in Kings County collected salaries from the City of New York for which they performed no service. The evidence reflected that the defendant knew the names of a half-dozen Law Secretaries who did not "show up at all." According to the evidence, it has been the practice in Kings County that "district leaders" influence or control the appointments and promotions of Law Secretaries.

More specifically, the evidence before the Grand Jury revealed that an individual named Theodore Mann appeared as a Law Secretary to the defendant on the Civil Court of the City of New York payroll for a period of sixteen months, at an annual salary of $18,500. The evidence also revealed that Mann rarely appeared at the Court, performed little or no work and was a resident of the State of Florida for a period of the time that he was on the Court payroll.

Evidence before the Grand Jury showed further that a young law school graduate appeared regularly at the Civil Court to pick up the payroll check made out to Mann. Proof before the Grand Jury indicated that the law school graduate was ineligible to be appointed a Law Secretary, was not employed by the Court, but that he participated in courtroom proceedings as if he were a court official.

Accordingly, it became material and necessary to question the defendant concerning his knowledge of the "half-dozen Judge's secretaries" who did not work.

On March 14, 1974, the defendant appeared as a witness before the Grand Jury, was duly sworn, and gave testimony concerning the investigation.

Whereupon, the defendant swore falsely when he testified that he had at no time told anyone that he knew the names of a half-dozen Judges' secretaries who never report to work.

Whereas in truth and in fact, the defendant stated that he did know the names of a half-dozen Judges' secretaries who never report to work. In fact, the defendant had stated that to Dennis Unterman on the day before he testified before the Grand Jury.

This false testimony was to a material matter, in that it obstructed and prevented the Grand Jury from determining the true facts relating to the employment and work practices of Law Secretaries.

FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, accused the defendant of the crime of PERJURY IN THE FIRST DEGREE in violation of Section 210.15 of the Penal Law, committed in the County of Kings, as follows:

The Grand Jury has been conducting an investigation to determine whether certain political party officers have conspired to accept bribes to improperly influence the appointments of Law Secretaries to Judges and Justices of the Courts having jurisdiction in Kings County. The Grand Jury has also been investigating to determine whether, as part of this conspiracy, Law Secretaries were permitted as a result of these bribes to absent themselves from work and to perform no services for the salaries they received.

Evidence adduced before the Grand Jury disclosed that a number of Law Secretaries assigned to the Courts in Kings County collected salaries from the City of New York for which they performed no service. The evidence reflected that the defendant knew the names of a half-dozen Law Secretaries who did not "show up at all." According to the evidence, it has been the practice in Kings County that "district leaders" influence or control the appointments and promotions of Law Secretaries.

More specifically, the evidence before the Grand Jury revealed that an individual named Theodore Mann appeared as a Law Secretary to the defendant on the Civil Court of the City of New York payroll for a period of sixteen months, at an annual salary of $18,500. The evidence

also revealed that Mann rarely appeared at the Court, performed little or no work and was a resident of the State of Florida for a period of the time that he was on the Court payroll.

After the defendant learned that the young law school graduate had been subpoenaed in relation to this Grand Jury investigation, the defendant—according to the testimony—met with this young man and discussed the missing law clerk situation with him.

Accordingly, it became material and necessary to question the defendant concerning his conversation with the young law school graduate.

On March 14, 1974, the defendant appeared as a witness before the Grand Jury, was duly sworn, and gave testimony concerning this investigation.

Whereupon, the defendant swore falsely when he testified that he did not tell the young law school graduate what to say before the Grand Jury.

Whereas, in truth and in fact, the defendant did tell the young Law Secretary what to say before the Grand Jury.

This false testimony was to a material fact in that it obstructed and prevented the Grand Jury from determining the true facts relating to the employment and work practices of Law Secretaries.

Addendum—Indictment

FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, accuses the defendant of the crime of TAMPERING WITH A WITNESS in violation of Section 215.10 of the Penal Law committed in the County of Kings, as follows:

The defendant, on March 13, 1974, knowing that Dennis Unterman was about to be called as a witness in a Grand Jury proceeding, knowingly made a false statement to Dennis Unterman with the intent to affect the testimony of Dennis Unterman.

/s/

Maurice H. Nadjari
Deputy Attorney General

A TRUE BILL

April 17, 1974

/s/

FOREMAN